

STATE OF MONTANA  
BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

IN THE MATTER OF APPLICATION  
FOR CHANGE OF APPROPRIATION  
WATER RIGHT NO. 2248-c41I, BY  
KIMPTON RANCH COMPANY

**FILMED**  
APR 19 1980

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, as entered on May 22, 1975, by the Hearing Examiner, and the corrections to the Proposed Findings of Fact submitted by the attorney for all the objectors and agreed to by the Applicant as dated and signed on June 13, 1975, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order, as set forth below:

FINDINGS OF FACT

1. On May 9, 1974, the Applicant made application with the Department of Natural Resources and Conservation for a change of appropriation of the following water right: Crow Creek Decree Case No. 236, John E. Smith, et al., plaintiffs, vs. A. T. Duff, et al., defendants, dated May 27, 1907, decreed to Riverside Land and Livestock Company, Willis Ottillie, Albert Smith, and Leslie Smith, 50 miner's inches, dated May 1, 1873, and 150 miner's inches, dated May 1, 1878, in Broadwater County, Montana. The above two (2) water rights have been diverted from Lower Crow Creek, a tributary of the Missouri River, at a point in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 19, Township 5 North, Range 2 East, M.P.M., and used for irrigation on a total of 110 acres, more or less, in Section 20, Township 5 North, Range 2 East, M.P.M.

The proposed change is to divert the above water from Lower Crow Creek at a point in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 16, Township 5 North, Range 1 East,

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M.P.M., and use it for supplemental water on a total of 640 acres, more or less, in the S $\frac{1}{2}$  of Section 27 and the N $\frac{1}{2}$  of Section 34, Township 5 North, Range 1 East, M.P.M.

The proposed change is for point of diversion and place of use and for no other reason.

2. On December 23, 1974, Mr. Louis Anzik submitted a timely objection to the application on grounds that the transfer would adversely affect his water right because the proposed place of use would require more water.

On December 23, 1974, Messrs. Peter and Gordon P. Brug submitted a timely objection to the application on the grounds that this water right has been used on their property for 30 years and a transfer would adversely affect their prior existing water right.

On December 23, 1974, Mrs. Alfred Doughty submitted a timely objection to the application on the grounds that the proposed means of diversion are inadequate because the ditch is already overcrowded and will overflow if more water is put into it.

On December 27, 1974, Mr. George Dundas submitted a timely objection on the grounds that the proposed means of diversion are inadequate because the West Channel (ditch) is already filled to full capacity.

On December 30, 1974, Ms. Mary Sue Griffeth submitted a timely objection to the application on grounds that the proposed transfer would adversely affect prior existing rights because the place of use as proposed in the application for transfer is several miles downstream from the present place of use and the additional distance of conveyance would create an excessive amount of ditch loss.

On December 30, 1974, Mr. George H. Hensley submitted a timely objection to the application on grounds that the proposed point of diversion is above the present point of diversion (the proposed place of use is below the present

place of use) and this would cause a shortage of water for those diverting below the proposed point of diversion.

On December 30, 1974, Mr. Floyd Poe submitted a timely objection to the application on grounds that the proposed means of diversion are inadequate because the ditch runs full now, and the water right is no longer appurtenant to the Riverside Ranch because it has been used elsewhere for 30 years.

On December 30, 1974, the Turman Ranch Company submitted a timely objection to the application on the grounds that the proposed transfer will adversely affect their existing water right because this water right has not been used for many years.

On December 30, 1974, Mr. Ben Webb submitted a timely objection to the application on grounds that the proposed means of diversion are inadequate because the ditch is too small to carry the additional water.

On December 27, 1974, Mr. William Webb submitted a timely objection to the application on the grounds that the proposed means of diversion are inadequate because the ditch is too small and the proposed transfer would adversely affect prior existing rights by transferring the point of diversion upstream.

3. Testimony at the Hearing concerned the appropriation of water by three separate ranches from the source of Crow Creek. These ranches were referred to as the Riverside Ranch, the Kimpton Ranch, and the Hutcheson Ranch. The Riverside Ranch is the farthest downstream. The Kimpton Ranch is 3½ miles upstream from the Riverside, and the Hutcheson is 3½ miles above that. The Kimpton Ranch has been owned by the Kimpton family for more than 40 years.

Both the Hutcheson Ranch and the Riverside Ranch were once owned by a Mr. Doughty. In the early 1940's, or about 35 years ago, Mr. Doughty began using the Riverside water right on the Hutcheson Ranch. This Riverside water right was used continuously on the Hutcheson place until 1973, when the Kimpton

Brothers leased from year to year the Riverside Ranch from a Mr. Grandchamp who had acquired a life estate in the Riverside Ranch.

Also in 1973, the Brug Brothers purchased the Hutcheson Ranch. In 1973, the Kimpton Brothers insisted that the ditch rider deliver the Riverside water rights to the Riverside Ranch, and they were.

On May 9, 1974, the Applicant submitted the subject application with the Department to change the point of diversion and place of use of the Riverside water right from the Riverside Ranch to the Kimpton Ranch.

CONCLUSIONS OF LAW

1. Under the provisions of Section 89-893, R.C.M. 1947, a permit to change appropriation (place of use and point of diversion) is required to transfer the use of water from the source of Crow Creek.

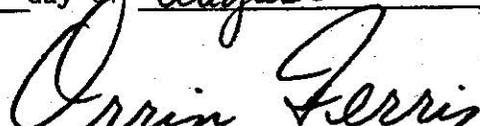
2. The subject water right was decreed to the Riverside Ranch, but for many years has been used on the Hutcheson Ranch.

3. The subject water right is decreed to the Riverside Ranch, which is leased by the Applicants.

ORDER

The subject application for change of appropriation water right is denied.

Done this 27<sup>th</sup> day of August, 1975

  
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Administrator, Water Resources Division  
DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

NOTICE: Section 89-8-100, R.C.M. 1947, provides that a person who is aggrieved by a final decision of the Department is entitled to a hearing before the Board of Natural Resources and Conservation. A person desiring a hearing before the Board pursuant to this section must notify the Department in writing within ten (10) days of the final decision.

Address: Department of Natural Resources and Conservation  
Natural Resources Building  
32 South Ewing  
Helena, MT 59601

BEFORE THE DEPARTMENT  
OF  
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION FOR  
CHANGE OF APPROPRIATION WATER RIGHT  
NO. 2248-c41I, KIMPTON RANCH CO.

}  
} PROPOSAL FOR DECISION  
}

Pursuant to the Montana Water Use and Administrative Procedure Acts, after due notice, a hearing was held on February 27, 1975 at Townsend, Montana for the purpose of hearing objections to the above-named application.

Mr. William R. Kimpton, President of the Kimpton Ranch Company, appeared at the hearing and presented testimony for the applicant. Albert Kimpton also appeared at the hearing and presented testimony for the Applicant. They were not represented by counsel.

Mr. Louis Anzik, Mr. Peter and Mr. Gordon P. Brug, Mrs. Alfred Doughty, Mr. George Dundas, Ms. Mary Sue Griffeth, Mr. George H. Hensley, Mr. Floyd Poe, the Turman Ranch Company, by Mr. Wallace B. Turman, President, Mr. Ben Webb, Mr. William Webb, and Mr. George H. Hensley appeared at the hearing and presented testimony. All of the objectors were represented by counsel, Mr. Charles A. Graveley, Esq., of Helena, Montana.

Mr. Charles Hough, Crow Creek ditch rider, appeared and presented testimony about the apportionment of Crow Creek water.

The Hearing Examiner requested Mr. Graveley, counsel for the objectors, to submit a brief in support of the objectors' position. This brief was received March 28, 1975, and is now part of the file.

As required by law, the Hearing Examiner hereby makes the following Proposed Findings of Fact, Conclusions of Law, and Order to the Administrator, Water Resources Division, Department of Natural Resources and Conservation.

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PROPOSED FINDINGS OF FACT

1. On May 9, 1974, the Applicant made application with the Department of Natural Resources and Conservation for a change of appropriation of the following water right: Crow Creek Decree Case No. 236, John E. Smith, et al., Plaintiffs vs. A. T. Duff, et al., Defendants dated May 27, 1907, decreed to Riverside Land and Livestock Company, Willis Ottillie, Albert and Leslie Smith, 50 miners inches dated May 1, 1873 and 150 miners inches dated May 1, 1878 in Broadwater County, Montana. The above two (2) water rights have been diverted from Lower Crow Creek, a tributary of the Missouri River at a point in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 19, T. 5N., R. 2E., M.P.M. and used for irrigation on a total of 110 acres more or less in Section 20, T. 5N., R. 2E., M.P.M.

The proposed change is to divert the above water from Lower Crow Creek at a point in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 16, T. 5N., R. 1E., M.P.M., and use it for supplemental water on a total of 640 acres, more or less, in the S $\frac{1}{2}$  of Section 27 and the N $\frac{1}{2}$  of Section 34, T. 5N., R. 1E., M.P.M.

The proposed change is for point of diversion and place of use and for no other reason.

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Also in 1973 the Brug Brothers purchased the Hutcheson Ranch. In 1973 the Kimpton Brothers insisted that the ditch rider deliver the Riverside water rights to the Riverside Ranch, and they were.

On May 9, 1974, the Applicant submitted the subject application with the Department to change the point of diversion and place of use of the Riverside water right from the Riverside Ranch to the Kimpton Ranch.

#### PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Sections 89-892 and 89-893 R.C.M. 1947, a permit to change appropriation (place of use and point of diversion) is required to transfer the use of water from the source of Crow Creek.
2. The subject water right was decreed to the Riverside Ranch, but for many years has been appurtenant to the Hutcheson Ranch.
3. The Brug Brothers apparently acquired the subject water right with their purchase of the Hutcheson Ranch in 1973, and it is therefore not available for change by either Mr. Grandchamp or the applicants.

PROPOSED ORDER

The subject application for change of appropriation water right be denied.

NOTICE

This is a Proposed Order and will become final when accepted by the Administrator of the Water Resources Division of the Department of Natural Resources and Conservation. Written exceptions to the proposed Order shall be filed with the Department within ten (10) days of service upon the parties herein. Upon receipt of any written exceptions, opportunity will be provided to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

DATED this 22 day of May, 1975.

James A. Lewis  
Hearing Examiner